FILE COPY

FILED
FEB 3 1937
CHARLES ELMORE CROPLEY
CLERK

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1936.

No. 460.

CHARLES VAN BEECK, ADMINISTRATOR, ETC., PETITIONER,

VS.

SABINE TOWING COMPANY, INC., ET AL.

BRIEF OF PETITIONER.

M. G. ADAMS,
Goodhue Building,
Beaumont, Texas.
H. C. HUGHES,
2219 Ave. C.,
Galveston, Texas.
Counsel for Petitioner.

HOWTH, ADAMS & HART,
LOCKHART, HUGHES & LOCKHART,
Of Counsel.

INDEX.

Caption. 1

Preliminary Statement. 2

Point One—The Circuit Court of Appeals erred in holding that Charles Van Beeck, Administrator, was not entitled to recover the amount of damages which had accrued from the death of the son, Edward C. Van Beeck, to the death of the mother, Mrs. Jennie Royakers, as found by the Commissioner. 4

Discussion of Authorities. 4-14

Conclusion. 14

List of Authorities.

Alpha Steamship Corporation vs. Kane, 281 U. S. 642, 74 L. Ed. 1086. 13

Arizona, The, vs. Anelich, 298 U. S. 110, 80 L. Ed. 1075. 13

Bainbridge vs. Merchants & M. Transp. Co., 287 U. S. 280, 282, 77 L. Ed. 305. 13

Beadle vs. Spencer, 298 U. S. 124, 80 L. Ed. 1082. . . . 13

Cassard vs. Tracy, 52 La. Ann. 835, 27 So. 368, 49 L. R. A. 272. 10

Chicago, Burlington & Quincy R. R. Co. vs. Wells Dickey Trust Co., 275 U. S. 161, 48 Sup. Ct. 73, 72 L. Ed. 216, 59 A. L. R. 758. . . . . 4, 13

City of Rome, The, 48 Fed. (2nd) 341-2. 6

Cooper vs. Shore Electric Company, 63 N. J. L. 558, 44 L. Ed. 633. . . . . 8, 9

Cortes vs. Baltimore Insular Line, 77 L. Ed. 373, 287 U. S. 374-376. 12

Employers' Liability Act, 45 U.S.C.A., Section 51 11

Fitzgerald vs. Edison Electric Illuminating Co., 207 Pa. 118, 56 Atl. 350. . . . . 8, 9
Frazier vs. Georgia R. & Banking Co., 101 Ga. 77, 28 S. E. 662. 9

Jamison vs. Encarnacion, 281 U. S. 635, 74 L. Ed. 1082. 13

Kentucky Utilities Co. vs. McCarty, 169 Ky. 38, 183 S. W. 237. 8

Lewis vs. Penn Ry. Co., 220 Pa. 317, 69 Atl. 821, 18 L. R. A. (N.S.) 279. 10

Martin's Administrator vs. Baltimore & Ohio Ry. Co., 151 U. S. 673, 703. 7
Meekin, Re, 164 N. Y. 145, 51 L. R. A. 235. . . . . 6, 8
Merchant Marine Act of 1920, 46 U.S.C.A., Section 688. . . . . 10, 11
Mundt vs. Glokner, 24 App. Div. 110, 48 N. Y. Supp. 940. 8

Pearsall vs. Great Northern Ry. Co., 161 U. S. 646, 673, 40 L. Ed. 838. 10
Pitkin vs. New York C. & H. R. R. Co., 94 App. Div. 31, 87 N. Y. Supp. 906. 8

Quinn vs. Moore, 15 N. Y. 432. 9

Seward vs. Vera Cruz (Eng.), 10 App. Cas. 59, 67, 70. 9
Shawnee vs. Cheek, 41 Okla. 227 at page 256, 51 L. R. A. (N.S.) 672, 137 Pac. 724, and Ann. Cas. 1915C, 290. 7
Sider vs. General Electric Company, 238 N. Y. 64, 143 N. E. 792, 34 A. L. R. 158. 6

Thomas vs. Maysville Gas Co., 112 Ky. 569, 66 S. W. 398. 8

Trustees of Presbytery of Jersey City vs. Trustees of First Presbyterian Church of Weehawken, 80 N. J. Law 572, 78 Atl. 207. 10

Union Steamboat Co. vs. Chaffin's Administrator, 204 Fed. 417. . . . . 6, 13

Warner vs. Goltra, 293 U. S. 155, 79 L. Ed. 254. . . . 13

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1936.

No. 460.

CHARLES VAN BEECK, ADMINISTRATOR, ETC., PETITIONER,

VS.

SABINE TOWING COMPANY, INC., ET AL.

BRIEF OF PETITIONER

On Writ of Certiorari Filed October 12, 1936.

Certiorari Granted November 16, 1936.

TO THE HONORABLE, THE SUPREME COURT OF THE UNITED STATES:

Comes now the Petitioner, Charles Van Beeck, Administrator of the estate of Edward C. Van Beeck, deceased, and files in this cause his brief wherein he has separated the issues in this cause from those involved

in the petition in cause No. 459, Brennan, Administratrix, vs. Sabine Towing Company, Inc., and which were presented together in the original application for certiorari.

PRELIMINARY STATEMENT.

The proceedings in which this writ was granted were begun in the United States District Court for the Eastern District of Texas at Beaumont, Texas, on June 27th, 1930. A libel was filed by the Sabine Towing Company, Inc., owner of the steam towboat "EDGAR F. COXEY" in a cause of exoneration from or limitation of liability. Said towboat sank with all on board on January 27, 1930. Certain suits were filed in the State Courts on account of the negligent drowning of members of the crew of said vessel, and thereupon this proceeding was instituted (R. 1-6).

Claims were filed in the limitation proceedings by personal representatives of several members of the crew and among them was the claim of Mrs. Jennie Royakers suing as administratrix of the estate of Edward C. Van Beeck, her son (R. 7-13).

On the 17th day of June, 1930, the District Court rendered an interlocutory decree wherein it was adjudged that the petitioner was not entitled to exemption from liability and its prayer for exoneration from or limitation of liability was denied. It was further adjudged that the claimants were entitled to all damages

that had accrued to them by reason of the sinking of said vessel, and the question of damages was referred to Samuel C. Lipscomb, Esq., as Commissioner, to assess and report his conclusions as to damages (R. 13-16).

After the interlocutory judgment was rendered, the death of Mrs. Jennie Royakers was suggested, and it was shown to the Court that Charles Van Beeck had been substituted as administrator of the estate of Edward C. Van Beeck. The Court thereupon duly substituted Charles Van Beeck in the cause as administrator in lieu of and as a substitute for Mrs. Jennie Royakers, administratrix (R. 23-24).

In the Commissioner's report the following agreement was shown:

> "It was agreed by counsel that Edward Van Beeck at the time of his death was unmarried, and that he left surviving him his mother, Mrs. Jennie Royakers, and several brothers, and that at the time of his death he was contributing to the support of his mother from $30.00 to $50.00 per month. It was further agreed that his mother died on July 31st, 1931, and that at the time of her death she was fifty-eight years of age. The pecuniary loss is limited to the duration and extent of the lifetime of the mother (*Snider* v. *G. E. Co.* (N. Y.), 34 A. L. R. 158) (fols. 353-359). The award in this case is fixed at $700.00" (R. 22-23).

The District Court made the same finding as the Commissioner (R. 24-25). The final decree awarded damages to all claims except to Charles Van Beeck, administrator, suing on behalf of the mother of Edward C. Van Beeck (R. 25-28). Error was assigned to the failure of

the trial court to make any allowance in this regard (R. 34).

The Circuit Court of Appeals for the Fifth Circuit, affirmed the action of the District Court in making no allowance to the administrator for damages which had accrued to Mrs. Jennie Royakers up to the time of her death (R. 43-44). This was assigned as error in petition herein and certiorari upon said question was granted November 16th, 1936.

POINT ONE.

The Circuit Court of Appeals erred in holding that Charles Van Beeck, Administrator, was not entitled to recover the amount of damages which had accrued from the death of the son, Edward C. Van Beeck, to the death of the mother, Mrs. Jennie Royakers, as found by the Commissioner.

There was no controversy as to the facts in regard to the damages arising as a result of the death of Edward C. Van Beeck. The District Court and the Circuit Court of Appeals, both, based their judgments, wherein they disallowed any damages on behalf of the mother of Edward C. Van Beeck, upon the case of *Chicago, Burlington & Quincy R. R. Co.* v. *Wells Dickey Trust Company*, 275 U. S. 161, 48 Sup. Ct. 73, 72 L. Ed. 216, 59 A. L. R. 758.

However, the facts of that case were entirely different from those involved here. There one Anderson was killed and shortly thereafter his mother died, before an administrator was appointed and before the filing of

any suit. Moreover, the administrator appointed later did not bring the suit for the benefit of the mother nor for her estate, but exclusively on behalf of the sister of Anderson. The state Court permitted recovery, the judgment was reversed by this Court, which held that the cause of action vested exclusively in the mother; that the statute did not give the sister a right of action, but that such right had already vested under the statute in the mother, and that, therefore, there could be no shifting not divestiture.

In that case this Court called attention to the fact that "No action was brought on her (the mother's) behalf." This Court also used this language:

> "The cause of action accrues at the death * * *. When it accrues, there is an immediate, final and absolute vesting; and the vesting is in that one of the several possible beneficiaries who, according to the express provision in the statute, is declared entitled to be compensated. Upon Anderson's death, an administrator might have been appointed and an action brought immediately. If it had been so brought, it would have been for the benefit solely of the mother; and no other action would have lain. The failure to bring the action in the mother's lifetime did not result in creating a new cause of action after her death for the benefit of the sister."

There is no such question in the case at bar, since the administratrix was appointed and brought suit and was entitled to recover for the mother the amount of benefits that it could be shown she was entitled to until the time of her death. After her death, an administrator being appointed in her name, place and stead, he had

the right to recover for the benefit of her estate such sum as she would have been entitled to recover for herself up to that time, had she lived. We are claiming only the amount of money which had accrued up to the time of the mother's death. Numerous cases have allowed such recovery.

In *Union Steamboat Company* v. *Chaffin's Administrators,* 204 Fed. 417, the Circuit Court of Appeals for the Seventh Circuit holds, quoting from a New York case, as follows:

> "The right to such damages which thus accrues became an asset of the estate of the beneficiary designated by the statute, and the death of such beneficiary does not prevent or terminate a right of action to recover damages which have thus been by him suffered." Citing *Matter of Meekin* v. *Brooklyn H. R. R. Co.,* 164 N. Y. 145, 58 N. E. 50, 51 L. R. A. 235, 79 Am. St. Rep. 635.

The New York Court of Appeals in *Sider* v. *General Electric Company,* 238 N. Y. 64, 143 N. E. 792, 34 A. L. R. 158, holds, quoting from syllabus, as follows:

> "Damages to be allowed to the widow of one killed by another's negligence, where she dies before trial of the action, are to be limited to the pecuniary loss sustained by her until her death."

In the *City of Rome,* 48 Fed. (2nd) 341, 342, the Court fully discusses this question, citing the *Union Steamboat Co.* v. *Chaffin's Administrators, supra,* and *Chicago, Burlington & Quincy R. R. Co.* v. *Wells Dickey, supra,* and other cases, and holds that the right of the

beneficiary to damages to the date of death does not abate with the death of such beneficiary, but that damages may be recovered up to the time of the death.

The case of *Martin's Administrator* v. *Baltimore & Ohio Ry. Co.*, 151 U. S. 673-703, cited by the Circuit Court of Appeals below as sustaining their decision that the petitioner was not entitled to judgment, has no applicability to the facts of this case. In the case referred to one Martin sued the railway company for damages arising from personal injuries. Upon a trial in the lower court recovery was denied. Some years later he died, while the case was on appeal to this court and it was held that an administrator could not proceed further with the case. There was no showing, so far as we can find from the record, that his death was caused from his injuries, or that there was any beneficiary entitled to recover. In fact, as above stated, he had already been denied recovery in the trial court. There is nothing in the case referred to that would have any bearing whatever upon the case now before this court. In the case at bar the lower court had given judgment in favor of all claimants except the administrator of Edward C. Van Beeck's estate and this was denied because the mother had died pending the suit.

It has been the general holding and the rule is supported by the weight of authority under statutes like the one in question, where the cause of action is *vested* in a beneficiary, that such right so accruing is not forfeited by the death of the beneficiary.

The matter has been fully discussed in *Shawnee* v. *Cheek*, 41 Okla. 227 at page 256, 51 L. R. A. (N.S.) 672, 137 Pac. 724, and Ann. Cas. 1915C, 290, wherein the Court says:

> "A recent case holding that a right of action for death under the statutes of Illinois, which do not appear materially different from our own in this respect, accrues immediately upon death, becomes an asset of the estate of the beneficiary, and survives the death of the beneficiary, is that of *Union Steamboat Co.* v. *Chaffin*, 122 C. C. A. 598, 204 Fed. 412, and in that case the case of *Pitkin* v. *New York C. & H. RR. Co.*, 94 App. Div. 31, 87 N. Y. Supp. 906, which is to the same effect, is cited and quoted."

In the same case the Court further says, quoting from *Cooper* v. *Shore Electric Co.*, 63 N. J. L. 558, 44 Atl. 633, at page 635:

> "It is also clear that the pecuniary injury to be compensated for is that of the widow or persons who are next of kin at the time of the death of the deceased, and that the cause of action created by the statute inures to such persons as a vested right. By this statute a property right is created in the beneficiary of such a nature as would give the action the quality of survivorship, and take it out of the maxim, *actio personalis moritur cum persona.*"

The following cases support the same view:

Re: Meekin, 164 N. Y. 145, 51 L. R. A. 235; *Mundt* v. *Glokner*, 24 App. Div. 110, 48 N. Y. Supp. 940; *Thomas* v. *Maysville Gas Co.*, 112 Ky. 569, 66 S. W. 398; *Pitkin* v. *New York C. & H. RR. Co.*, 94 App. Div. 31, 87 N. Y. Supp. 906; *Kentucky Utilities Co.* v. *McCarty*, 169 Ky. 38, 183 S. W. 237; *Fitzgerald* v. *Edison Electric Illumi-*

nating Co., 207 Pa. 118, 56 Atl. 350; *Frazier* v. *Georgia R. & Banking Co.*, 101 Ga. 77, 28 S. E. 662; *Quinn* v. *Moore*, 15 N. Y. 432.

The English authorities quoted in *Cooper* v. *Shore Electric Company*, 63 N. J. L. 558, 44 Atl. 633, illustrate that a statute of this character gives an entirely new cause of action to the beneficiaries.

> "It gives a new cause of action clearly, and does not merely remove the operation of the maxim, '*actio personalis moritur cum persona*,' because the action is given in substance, not to the personal representative in point of estate of the deceased man, who would naturally represent him as to all his own rights of action which would survive, but to his wife and children, no doubt suing in point of form in the name of his executor."

Those authorities further describe the right given as:

> "an action which is new in its species, new in quality, new in principle, in every way new, and which can only be brought if there is any person answering the description of widow, parent, or child, who, under such circumstances suffers pecuniary loss by the death." *Seward* v. *Vera Cruz*, 10 App. Cas. 59, 67, 70.

All statutes like the one in question giving a cause of action for injuries resulting in death are founded largely upon Lord Campbell's Act, and should be given a like construction as above.

It will be noted that this Court in passing upon the Wells Dickey Trust Company case used the following language:

> *"The cause of action accrues at the death * * *. When it accrues, there is an immediate, final and absolute vesting; and the vesting is in that one of the several possible beneficiaries who, according to the express provision in the statute is declared entitled to be compensated. Upon Anderson's death, an administrator might have been appointed and an action brought immediately."*

This Court has stated:

> "They (rights) are vested when the right of enjoyment, present or prospective, has become the property of some particular person, or persons, as a present interest." *Pearsall* v. *Gt. Northern Ry. Co.*, 161 U. S. 646, 673, 40 L. Ed. 838.

The right to maintain a suit is a vested right.

> "There is a vested right in an accrued cause of action, in a defense of a cause of action, even in the statute of limitations, when the bar has attached by which an action for debt is barred." *Lewis* v. *Penn. Ry. Co.*, 69 Atl. 821, 823, 220 Pa. 317, 18 L. R. A. (N.S.) 279, 13 Ann. Cas. 1142.

See also same definition in *Cassard* v. *Tracy*, 52 La. Ann. 835, 27 So. 368, 49 L. R. A. 272.

> "Rights are vested when the right of enjoyment, present or prospective, has become the property of some particular person or persons as a present interest." *Trustees of Presbytery of Jersey City* v. *Trustees of First Presbyterian Church of Weehawken*, 80 N. J. Law 572, 78 Atl. 207.

This suit which was for the recovery for the death of seamen was brought and maintained under Section 33 of the Merchant Marine Act of 1920, at 46 U.S.C.A., Sec-

tion 688, and usually referred to as the Jones Act. In part that Statute reads:

> "and in case of the death of any seaman as a result of any such personal injury the personal representative of such seaman may maintain an action for damages at law with the right of trial by jury, and in such action all statutes of the United States conferring or regulating the right of action for death in the case of railway employees shall be applicable."

The Employers' Liability Act (45 U.S.C.A., Section 51) which was embodied in the Jones Act by reference reads in part as follows:

> "Every common carrier by railroad while engaging in commerce between any of the several States or Territories, or between any of the States or Territories, or between the District of Columbia and any of the States or Territories, or between the District of Columbia or any of the States or Territories and any foreign nation or nations, shall be liable in damages to any person suffering injury while he is employed by such carrier in such commerce, or, in case of the death of such employee, to his or her personal representative, for the benefit of the surviving widow or husband and children of such employee; and if none, then of such employee's parents; and if none, then of the next of kin dependent upon such employee, for such injury or death resulting in whole or in part from the negligence of any of the officers, agents or employees of such carrier, or by reason of any defect or insufficiency, due to its negligence, in its cars, engines, appliances, machinery, track, roadbed, works, boats, wharves or other equipment."

There is certainly nothing in either of these Acts that would warrant the suggestion that Congress intended a forfeiture of the damages accruing up to the time of the death of the beneficiary. The liberal construction which has always been given to the Jones Act would require the Court to hold that such damages so accruing are not forfeited by the death of such beneficiary.

Van Beeck was a member of the crew of the towboat "EDGAR F. CONEY" and was drowned. He was a seaman. This Court has always held that the Jones Act, which is for the benefit of seamen and their beneficiaries, should be liberally construed.

> "This Court has held that the Act (the Jones Act) is to be liberally construed in aid of its beneficent purpose to give protection to the seaman, and to those dependent on his earnings." *Cortes* v. *Baltimore Insular Line*, 77 L. Ed. 373, 287 U. S. 374-376.

This Court has also said:

> "The Jones Act has the effect of bringing into the maritime law, for the benefit of seamen, all appropriate statutes relating to employers' liability for the personal injury or death of railway employees. Both acts are to be treated as part of the maritime law. *Panama R. Co.* v. *Johnson*, 264 U. S. 375, 389, 68 L. Ed. 748, 753, 44 S. Ct. 391. Seamen have always been regarded as wards of the admiralty and their rights, wrongs and injuries a special subject of the admiralty jurisdiction. Benedict, Admiralty, 4th Ed., Sections 182, 603. The policy of Congress as evidenced by its legislation, has been to deal with them as a favored

class. *Robertson* v. *Baldwin*, 165 U. S. 275, 287, 41 L. Ed. 715, 719, 17 S. Ct. 326. In the light of and to effectuate that policy statutes enacted for their benefit should be liberally construed." *Bainbridge* v. *Merchants & M. Transp. Co.*, 287 U. S. 280-282, 77 L. Ed. 305.

Further on the question of construction of the Jones Act, we call attention to the fact that this Court has felt called upon to show their liberality, and that they consider seamen and their beneficiaries as "wards of the Court" in the following cases: *The Arizona* v. *Anelich*, 298 U. S. 110, 80 L. Ed. 1075; *Beadle* v. *Spencer*, 298 U. S. 124, 80 L. Ed. 1082; *Jamison* v. *Encarnacion*, 281 U. S. 635, 74 L. Ed. 1082; *Alpha Steamship Corporation* v. *Kane*, 281 U. S. 642, 74 L. Ed. 1086; *Warner* v. *Goltra*, 293 U. S. 155, 79 L. Ed. 254.

Certainly the decision below, if allowed as a precedent, would have the effect of destroying from their inception those causes of action that have vested by operation of the statute, and would abate them immediately upon the death of the beneficiaries. Likewise it would result inevitably that, because of the prolonged delays peculiar to this class of litigation, not a few of such claims would be automatically settled by death, to the profit of the wrongdoer. Liberality of construction would not permit such result. The Seventh Circuit in *Union Steamboat Company* v. *Chaffin's Administrators*, *supra*, has already liberally construed a similar statute.

It is our view that this Court in *Chicago, Burlington & Quincy R. R. Co.* v. *Wells Dickey Trust Co.*,

supra, has in effect held that the surviving beneficiary's right is not subject to defeasance for damages accruing up to the time of the death of the beneficiary, since this Court has held that the right is a vested one, and therefore not subject to forfeiture. In any event, a liberal view, and one sustained by the great weight of authority, is that the administrator herein is entitled to recover the damages suffered by Mrs. Royakers up to the time of her death.

We therefore pray that the judgment of the District Court and of the Circuit Court of Appeals be reversed and that judgment be here and now entered for such damages as are shown by the stipulation on file, or in the alternative that this cause be remanded for the entry below of such judgment as should have been rendered upon the original hearings of this cause.

M. G. Adams,
Goodhue Building,
Beaumont, Texas,
H. C. Hughes,
2219 Ave. C.,
Galveston, Texas,
Proctors for Petitioner, Charles Van Beeck, Administrator of the Estate of Edward C. Van Beeck.